



**EXEMPTION FROM THE SHORELINE MANAGEMENT PROGRAM
SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENT**

SHX2016-00088

Applicant: Lummi Indian Business Council
c/o Jill Komoto
2665 Kwina Rd.
Bellingham, Washington 98226

Project Description: The Porter Creek Reach Restoration Phase 1 project will construct 11 engineered log jams (ELJs) in the Middle Fork Nooksack River (RM 4.6-4.9) and along a side channel associated with Porter Creek. The proposed project is phase 1 of an anticipated 5 phase project in the overall reach of RM 3.9-4.95. The project is designed to create and increase diverse habitat in the Middle Fork Nooksack River.

Project Location(s): Middle Fork Nooksack River – (RM 4.6-4.9)
Section 13 & 14, Township 38 North, Range 05 East W.M.
TPN(s): 380514331381, 380514999905, 380513999905,
380513296248

Water Body: Middle Fork Nooksack River

Shoreline Designation: Conservancy & Aquatic

SEPA: **Determination of Non-significance issued by
Whatcom County Planning and Development
Services on July 8, 2016 (SEP2016-00063)**

Whatcom County Shoreline Management Program (SMP), Title 23, Section 23.60.022(P) allows projects of which the primary purpose is to improve fish or wildlife habitat or fish passage to be reviewed without the need for a substantial development permit when all of the following apply:

1. The project has been approved in writing by the Washington State Department of Fish and Wildlife (WDFW) as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;
2. The project received hydraulic project approval by WDFW pursuant to RCW 77.55; and
3. The Shoreline Administrator (Administrator) has determined that the project is consistent with the SMP.

An exemption from the substantial development permitting process is not an exemption from compliance with the Washington State Shoreline Management Act (SMA), the SMP, or from any other applicable regulatory requirements. To be authorized, all developments must be consistent with the appropriate policies and regulations of the SMA and SMP.

Restoration means the re-establishment or upgrading of impaired ecological shoreline processes or functions (WCC 23.110.R.9). Restoration projects are permitted within the Conservancy and Aquatic Designations if carried out in accordance with the approved shoreline restoration plan (County Resolution 2007-011 and in accordance with other applicable policies and regulations of the SMP).

According to Section 4.1.2.3 of the Whatcom County Shoreline Restoration Plan (Restoration Plan) identifies limiting factors and potential restoration opportunities within the Middle Fork Nooksack (MF) River Watershed Management Unit (WMU). The MF WMU is identified as one of the top priority areas for salmon recovery. The loss of stable forested islands and hydraulic roughness has reduced the quality, availability, and diversity of habitat for fish and other aquatic species. The creation of stable islands in appropriate locations by installing log jams to restore lateral and vertical channel stability, increase hydraulic roughness, and promote off-channel habitat development are specific restoration opportunities outlined within the Restoration Plan; and consistent with the project proposal.

The requested Shoreline statement of exemption is approved subject to the attached conditions. Note that pursuant to Section 23.60.150, the applicant or any opponent of this determination may appeal this administrative permit decision to the office of the Hearing Examiner. The application for appeal from the Shoreline Administrator's decision may be obtained at the Planning and Development Services Office. Such an appeal shall be filed within twenty (20) calendar days of this determination.

Note that obtaining a shoreline statement of exemption for a development or use does not excuse the applicant from complying with any other State, regional or Federal statutes or regulations applicable to such development or use.

Official: Kyla Walters
Title: Shoreline Administrator



August 3, 2016

CONDITIONS ASSOCIATED WITH SHX2016-00088

1. *The proposed work shall be consistent with the scope and site plans reviewed and approved pursuant to this statement of exemption. Any changes will require additional review by the Whatcom County Shoreline Administrator.*
2. *Any changes to the scope, hydraulic memo, or plans will require additional review to ensure compliance with Title 17.*
3. *All materials utilized below the ordinary high water mark (OHWM) shall be untreated.*
4. *Ground disturbing activity shall be kept to the minimum necessary to accommodate the approved developments and vegetation clearing shall be kept to a minimum. Removal of existing large woody debris (LWD) or other in-channel material shall be kept to a minimum, and if necessary, replaced upon completion of the work in such areas.*
5. *The proposed log jams shall be constructed to mimic the appearance of natural jams to the maximum extent feasible.*
6. *Per WCC 16.16.260(C)(1-3), after project completion, an as-built in the form of a word document shall be submitted, which contains contact information and a write up of any deviations from the previously approved mitigation plan under case number MIT2016-00043 including documentation of installation of trees in the areas demonstrated in the mitigation plan. After the as-built has been submitted, a site inspection shall occur by Whatcom County Critical Areas staff in the presence of the applicant to verify the report. At that time, it will be determined if monitoring is required by Whatcom County Critical Areas staff to ensure there is no net loss to regulated critical areas.*
7. *Whatcom County will defer the project specific fish issues to the Washington Department of Fish and Wildlife Hydraulic Project Approval (HPA) (WCC 16.16.235.H).*
8. *Technical information for the project was provided in the JARPA and Restoration Programmatic Information Form, and further approved by Corps Nationwide Permit 27. The project shall be implemented according to these documents. If changes to the project occur, Whatcom County shall be notified.*
9. *Best management practices and erosion and sediment control measures described in the submitted documents will be employed for the duration of site activities.*
10. *Any future site development will require additional critical area review, including wetland rating data sheets, wildlife habitat documentation, and wetland evaluation. Changes to the submitted documents will require additional review by Whatcom County.*
11. *A post construction report shall be submitted to Whatcom County per WCC 16.16.260(C)(1-3).*

12. *Any future site development will require additional critical area review, including wetland rating data sheets, wildlife habitat documentation, and wetland evaluation. Changes to the submitted documents will require additional review by Whatcom County.*
13. *Any changes to the scope, hydraulic memo, or plans will require additional review to ensure compliance with Title 17.*
14. *The existing elevation of the right bank upstream of ELJ 1-2-2 at the flow split into the right channel will not be lowered during construction and the scour hole excavated as part of the construction of ELJ 1-2-2 shall be backfilled to maintain the high ground.*
15. *Access roads created in the floodplain for construction of the project shall be decommissioned and roughened in a way to prevent a preferential pathway for water to flow.*
16. *The applicant shall perform annual and post-flood monitoring of the right bank of the active channel in the vicinity of ELJs 1-2-1, 1-3-10, and 1-3-11 and the location where Mosquito Lake Road was previously relocated to identify changes that may increase the risk to the road right-of-way. Monitoring results will be reported to Whatcom County River & Flood.*
17. *In the event that lateral migration/erosion threatens the Mosquito Lake Road right-of-way, the applicant will incorporate measures to mitigate the risk to the roadway in future phases of work associated with this project.*
18. *If archaeological materials (bone, shell, midden cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907), LNTPO (384-2280) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and Lummi Sche'lan'en Department (384-2312) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.*
19. *The proposed jams and temporary construction access bridges shall be located, constructed, and managed to minimize impacts to navigation and/or other lawful use of the area by the general public. If such structures become navigation hazards in the future, they may require abatement.*
20. *Construction shall be commenced within two (2) years of the effective date of this shoreline exemption, as defined by 23.60.19.3, and shall be completed in five (5) years. The Shoreline Administrator may grant a single extension for a period of not more than one (1) year based on a showing of good cause. Such request must be filed with the Shoreline Administrator before the expiration date described above.*